

November 8, 2011

Client-Matter: 28934-030

**BY U.S. MAIL AND E-MAIL: palford@newportbeachca.gov**

Mr. Patrick J. Alford  
Planning Manager, Community Development Department  
City of Newport Beach  
3300 Newport Boulevard  
P.O. Box 1768  
Newport Beach, California 92658-8915



**Re: Newport Banning Ranch Draft EIR  
(State Clearinghouse No. 2009031061)**

Dear Mr. Alford:

These comments are submitted on behalf of Newport Banning Ranch LLC (NBR), the project proponent of the Newport Banning Ranch Project (Project) that is the subject of the City's Draft Environmental Impact Report (DEIR). Our comments are very limited and specific, and concern those impacts that support the DEIR's conclusion that Land Use Compatibility is a Significant and Unavoidable Impact.

The DEIR's conclusion regarding Land Use Compatibility is set forth as follows:

***Land Use and Related Planning Programs (Sect. 4.1, p. 4.1-49):*** "...the proposed project would result in a land use incompatibility with respect to...long-term noise impacts and night illumination on those Newport Crest residences immediately contiguous to the project site."

As described in the excerpt above, the incompatibility of placing residential uses on Newport Banning Ranch adjacent to existing residential uses in Newport Crest is a direct result of long-term noise and night illumination impacts. The fact that NBR's proposed residential project is considered incompatible with existing residences is of great concern for several reasons.

First, NBR's project is consistent with one of the alternative land uses for the Newport Banning Ranch property. When the City prepared its General Plan and certified the EIR for the General Plan, the City did not conclude that the voter-approved, allowed land uses in the General

Patrick Alford  
November 8, 2011  
Page 2

Plan (i.e., precisely what is being proposed by the NBR project) would cause a land use compatibility issue. The NBR DEIR supports this conclusion when it states:

***Sect. 4.1, p. 4.1-47, Land Use Policy Consistency Analysis***

*"...the General Plan EIR determines, 'if development occurs, policies in the proposed General Plan Update would ensure compatibility between proposed uses, on-site open space areas, and the adjacent existing residential uses.' Given that the General Plan provides for the option of the uses proposed by the Project, the Project implements the policies in the General Plan. Development on the site would reflect a continuation of development similar in nature to the urban development in the communities surrounding the Project site, this change in character of the site would not be considered a significant impact from a land use consistency perspective."*

Given the above statement, the fact that the proposed Project is consistent with the General Plan, the proposed Project provides both open space and residential uses adjacent to existing residential, and the General Plan EIR did not find Land Use Compatibility to be a significant environmental impact, we question the City's conclusion in the DEIR that the Project will result in a significant and unavoidable land use impact. Given that this Project implements the General Plan, the same findings that are set forth in the City's certified General Plan EIR should be applied to a project that is consistent with and implements the General Plan.

The conclusion that NBR's Project results in a significant land use incompatibility impact apparently stems from two other significant impacts resulting from implementation of two other General Plan land use components: an active park in this area of the City, and Bluff Road. Although we understand that the City's own General Plan EIR found that the impacts from night lighting at the park are significant and unavoidable, it seems that there are two points of analysis that should be applied to the environmental impacts of the NBR Project and potential mitigation.

First, as the General Plan EIR analyzed the impact of night lighting in the park and did not find a significant land use impact, this same conclusion should also be applied to the NBR Project which implements the City's General Plan, and the same finding regarding land use impacts should be made for the NBR Project – thus eliminating the finding that the Project has a significant and unavoidable land use impact due to night lighting.

Second, it seems that there is a feasible mitigation measure that would eliminate this impact. As CEQA and CEQA Guidelines Section 15126.4 require the City to consider all feasible mitigation measures to reduce or avoid significant impacts, the City should consider the following feasible mitigation measure: restricting the hours the lights are used, or eliminating them entirely. If the City were to adopt this measure, the impact could be reduced to less than



Patrick Alford  
November 8, 2011  
Page 3

significant. As park lighting is not a component of the NBR Project, NBR as the Project proponent cannot unilaterally choose not to install the lights or turn them off. This, however, is in the power of the City to implement, and we believe, consistent with CEQA's mandate that all feasible mitigation measures be implemented to reduce significant impacts, that a measure requiring either restricting the use of night lighting or not installing night lighting be adopted to reduce this significant impact to less than significant. While we understand that this does not meet the objectives of the General Plan that state as a goal to have a lighted park at Newport Banning Ranch, it would avoid the impact and therefore must be considered as required by CEQA.

With respect to the noise impacts, noise is a significant issue because the NBR Project is required under the City's General Plan to construct Bluff Road. When the City certified the EIR for its General Plan, it was aware of the proximity of Bluff Road to existing and proposed residential uses, but did not make a finding that this was a significant and unavoidable land use compatibility impact. For the same reasons set forth above regarding night lighting, we believe that the conclusions in the City's General Plan EIR must be applied to a project that is consistent with the General Plan and implements the land uses and circulation improvements identified in the General Plan and analyzed in the General Plan EIR.

We appreciate your consideration of these comments, and our team are available to provide additional information or answer questions with respect to these comments and our Project.

Very truly yours,



Susan K. Hori  
Manatt, Phelps & Phillips, LLP

cc: Michael Mohler, Newport Banning Ranch LLC (via email only)  
George Basye, Newport Banning Ranch LLC (via email only)